

FEB 08 2007

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REMARKS

Applicant thanks the Examiner for the remarks and analysis contained in the Office Action. Original claims 1-9 are cancelled. New claims 10-24 are presented. Applicant respectfully requests reconsideration of this application.

Applicant notes the Examiner's objection to the Declaration and submits a new Declaration with this response.

Applicant respectfully submits that the rejection under 35 U.S.C. §101 should be withdrawn. Method claims 10-18 recite patentable subject matter. The determination of the capacity of the node and the use of that determined capacity as recited in the claim provides a useful, concrete and tangible result.

The Court of Appeals for the Federal Circuit has provided guidance on what constitutes a useful, concrete and tangible result. In *State Street Bank & Trust v Signature Financial Group, Inc.*, 47 USPQ 2d 1596 (Fed. Cir. 1998), the Court of Appeals for the Federal Circuit provided three example situations where information or a determined value constitutes a useful, concrete and tangible result. When reaching the decision in the *State Street* case, the Federal Circuit stated:

We hold that the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces "a useful, concrete and tangible result" -- a final share price momentarily fixed for recording and reporting purposes.

*State Street*, 47 USPQ 2d at 1601.

The Federal Circuit also mentioned two earlier cases stating:

In *Alappat*, we held that data, transformed by a machine through a series of mathematical calculations to produce a smooth wave form display on a rasterizer monitor, constituted a practical application of an abstract idea (a mathematical algorithm, formula or calculation), because it produced "a useful, concrete and tangible result" -- the smooth wave form.

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Similarly in *Arrhythmia*..., we held that the transformation of electrocardiograph signals from a patient's heartbeat by a machine through a series of mathematical calculations constituted a practical application of an abstract idea (a mathematical algorithm, formula, or calculation), because it corresponded to a useful, concrete or tangible thing, the condition of a patient's heart.

*State Street* at 1601.

Likewise, the determined capacity recited in Applicant's claim 10 constitutes a useful, concrete and tangible result. Further, the use of that for determining whether to take preventive action constitutes statutory subject matter. The rejection under 35 U.S.C. §101 can be withdrawn.

Applicant respectfully traverses the rejection under 35 U.S.C. §103 based upon the proposed combination of the *Gao* and *Hanes* references. The proposed combination cannot be made. Where a proposed combination provides no benefit in the context of the primary reference, the combination cannot be made and there is no *prima facie* case of obviousness.

In this instance, the *Gao* reference simply uses a queue delay calculation for detecting whether overload takes place in a central processor. In the described example of the *Gao* reference, new traffic origination messages are placed on an origination queue and a timestamp of their arrival time is placed in the message. That information is used for determining any queue delay. That delay is then used to determine whether congestion is occurring. Peripheral processors then receive a message from the central processor and make an adjustment to a threshold for a new traffic origination if necessary.

There would be no benefit to adding information regarding different types of applications from the *Hanes* reference to the arrangement of the *Gao* reference. The *Gao* reference only requires information regarding delay time associated with messages on an origination queue. Any additional information regarding the type of application potentially associated with those

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messages does not provide any benefit because it is not useful for making the determination in the *Gao* reference. In other words, adding additional information from the *Hanes* reference to the *Gao* reference will not facilitate anything in the context of the *Gao* reference. Therefore, the proposed combination does not provide any benefit and the proposed combination cannot be made. There is no *prima facie* case of obviousness.

Applicant respectfully submits that this case is in condition for allowance. If the Examiner believes that a telephone conference would be useful to facilitate moving this case forward to issue, Applicant's representative will be happy to discuss any issues regarding this application and can be contacted at the telephone number indicated below.

Respectfully submitted,

CARLSON, GASKEY & OLDS

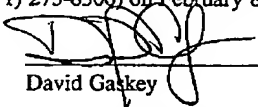
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**CERTIFICATE OF FACSIMILE**

I hereby certify that this Response, relative to Application Serial No. 10/660,962, is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on February 8, 2007.

  
David Gaskey

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